



House of Representatives

General Assembly

File No. 151

February Session, 2018

Substitute House Bill No. 5370

House of Representatives, April 3, 2018

The Committee on General Law reported through REP. D'AGOSTINO of the 91st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CHANGE ORDERS IN CONSTRUCTION CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 42-158j of the 2018 supplement to
2 the general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2018*):

4 (a) Each construction contract shall contain the following
5 provisions: (1) A requirement that the owner pay any amounts due to
6 any contractor in a direct contractual relationship with the owner, or
7 due to any subcontractor or supplier in a direct contractual
8 relationship with the contractor, whether for labor performed or
9 materials furnished, not later than thirty days after the date any
10 written request for such payment has been made to the owner by such
11 contractor, subcontractor or supplier; (2) a requirement that the
12 contractor pay any amounts due any subcontractor or supplier,
13 whether for labor performed or materials furnished, not later than
14 thirty days after the date the contractor receives payment from the

15 owner which encompasses labor performed or materials furnished by
16 such subcontractor or supplier; [and] (3) a requirement that the
17 contractor shall include in each of its subcontracts a provision
18 requiring each subcontractor and supplier to pay any amounts due any
19 of its subcontractors or suppliers, whether for labor performed or
20 materials furnished, not later than thirty days after the date such
21 subcontractor or supplier receives a payment from the contractor
22 which encompasses labor performed or materials furnished by such
23 subcontractor or supplier; and (4) a requirement that, for all pending
24 or approved change orders or directives to perform extra work totaling
25 twenty-five thousand dollars or more, the minimum allowable rate of
26 overhead and profit to be paid to any contractor or subcontractor who
27 performs such extra work shall be not less than fifteen per cent of the
28 total value of such extra work, including, but not limited to, the costs
29 of all labor, direct supervision, material and equipment required to
30 perform such extra work.

31 Sec. 2. Section 49-41b of the general statutes is repealed and the
32 following is substituted in lieu thereof (*Effective October 1, 2018*):

33 When any public work is awarded by a contract for which a
34 payment bond is required by section 49-41 and such contract contains
35 a provision requiring the general or prime contractor under such
36 contract to furnish a performance bond in the full amount of the
37 contract price, the following shall apply:

38 (1) In the case of a contract advertised by the Department of
39 Administrative Services or any other state agency, except as specified
40 in subdivision (2) of this section, (A) the awarding authority shall not
41 withhold more than seven and one-half per cent from any periodic or
42 final payment which is otherwise properly due to the general or prime
43 contractor under the terms of such contract, provided, when fifty per
44 cent of the contract is completed, said amount shall be reduced to five
45 per cent, and (B) any such general or prime contractor shall not
46 withhold from any subcontractor more than (i) seven and one-half per
47 cent from any periodic or final payment which is otherwise due to the

48 subcontractor, or (ii) the amount withheld by the awarding authority
49 from such general or prime contractor under subparagraph (A) of this
50 subdivision, whichever is less, provided, when fifty per cent of the
51 contract is completed, said amount shall be reduced to five per cent.
52 Payment shall be made not later than ninety days after a complete
53 application for payment demonstrating that fifty per cent contract
54 completion has been submitted to the awarding authority.
55 Notwithstanding the provisions of this subdivision (1), the awarding
56 authority shall establish an early release program with respect to
57 periodic payments by general or prime contractors to subcontractors.

58 (2) In the case of a contract advertised by the state Department of
59 Transportation, (A) the department shall not withhold more than two
60 and one-half per cent from any periodic or final payment which is
61 otherwise properly due to the general or prime contractor under the
62 terms of such contract, and (B) any such general or prime contractor
63 shall not withhold more than two and one-half per cent from any
64 periodic or final payment which is otherwise due to any subcontractor.

65 (3) If the awarding authority is a municipality, (A) the municipality
66 shall not withhold more than five per cent from any periodic or final
67 payment which is otherwise properly due to the general or prime
68 contractor under the terms of such contract, and (B) any such general
69 or prime contractor shall not withhold more than five per cent from
70 any periodic or final payment which is otherwise due to any
71 subcontractor.

72 (4) In the case of a contract advertised by the Department of
73 Administrative Services or any other state agency, except the state
74 Department of Transportation, or if the awarding authority is a
75 municipality or a municipal agency, a requirement that, for all pending
76 or approved change orders or directives to perform extra work totaling
77 twenty-five thousand dollars or more pursuant to the contract, the
78 minimum allowable rate of overhead and profit to be paid to any
79 contractor or subcontractor who performs such extra work shall be not
80 less than fifteen per cent of the total value of such extra work,

- 81 including, but not limited to, the costs of all labor, direct supervision,
82 material and equipment required to perform such extra work.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018</i>	42-158j(a)
Sec. 2	<i>October 1, 2018</i>	49-41b

GL *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 19 \$	FY 20 \$
Various State Agencies	All Funds - Cost	Potential Significant	Potential Significant

Note: All Funds=All Funds

Municipal Impact:

Municipalities	Effect	FY 19 \$	FY 20 \$
Various Municipalities	STATE MANDATE - Cost	Potential Significant	Potential Significant

Explanation

The bill would require that, for all pending or approved change orders or directives totaling \$25,000 or more to perform extra work on existing contracts, the minimum allowable rate of overhead and profit paid to any contractor or subcontractor who performs such extra work shall not be less than fifteen per cent of the total value of such extra work.

Department of Administrative Services

Under existing law, the Department of Administrative Services' (DAS) Division of Construction Services administers the remodeling, alteration, repair or enlargement of any real asset for all executive branch agencies, as well as the judicial branch.

In FY 17, with regards to non-school construction contracts that DAS administered, the change order amounts over \$25,000 would

have increased costs by \$100,000 based on the bill's overhead threshold.

Higher Education Constituent Units

The bill is estimated to increase costs to the higher education constituent units by approximately \$250,000 annually. This estimate is based on University of Connecticut current rates of change orders and construction methods, and how the bill will alter current university change order practices.

Municipalities

This mandate is a potentially significant cost to municipalities that currently pay less than 15% for overhead related to certain change orders, as the bill will increase the cost of those change orders. The cost will vary based on 1) the amount a municipality currently pays for overhead, and 2) the number of change orders totaling greater than \$25,000 ordered by municipalities.

School Construction

School construction contracts are also expected to see an increase because of the new overhead threshold. Any increase in the overhead costs in change orders will impact both the state and various municipalities. School construction projects are paid for by municipalities and reimbursed a predetermined, town-specific portion of the costs by the state, generally between 10 and 80 percent of eligible costs.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

*Sources: Constituent Units of Higher Education
Department of Administrative Services*

OLR Bill Analysis**sHB 5370*****AN ACT CONCERNING CHANGE ORDERS IN CONSTRUCTION CONTRACTS.*****SUMMARY**

This bill requires contractors or subcontractors who perform extra work on change orders or directives totaling \$25,000 or more to be paid at least 15% of the total value of the extra work. This includes profit and overhead, which include all labor, direct supervision, material, and equipment needed for such work.

For all pending or approved change orders or directives to perform extra work, the bill requires such minimum payment provisions to be in each (1) private construction contract and (2) public contract, for which payment bonds are required, by municipalities, municipal agencies, and state agencies, except for the Department of Transportation's contracts.

EFFECTIVE DATE: October 1, 2018

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 16 Nay 1 (03/15/2018)